

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KENNETH AUGUSTINE, No C-04-0624 VRW  
Plaintiff, ORDER  
v  
MARIN COUNTY,  
Defendant.

Plaintiff failed to oppose defendant's motion for summary judgment (Doc #20) in a timely fashion, and the court ordered plaintiff to show cause (Doc #22) why defendant's motion should not be treated as unopposed. Plaintiff has responded to the order to show cause. Doc #24. Liberally construing plaintiff's response, the court detects several discrete arguments interwoven throughout the response. The court addresses them seriatim.

Plaintiff asserts that his failure to respond in a timely fashion was due to time pressure:

I was not served the defendant's motions until March 17, 2005 \* \* \*. I am not an attorney and it seems extremely short notice to be expected

1 to reply in the two weeks before the March 31,  
2 2005, hearing \* \* \*. I am not yet finished and  
3 thought I had until the April 21, 2005 date as  
noticed on the defendant's documents.

4 Pl Resp (Doc #24) at 1:19-26. This evidences an utter ignorance of  
5 the rules of procedure in this court, an ignorance to which no one  
6 -- pro se or counseled -- is entitled. All parties in this court  
7 must comply with the court's rules. See King v Atiyeh, 814 F2d  
8 565, 567 (9th Cir 1987) (noting that "[p]laintiff should be aware  
9 that although he is \* \* \* representing himself in this action, he  
10 is nevertheless obligated to follow the same rules as represented  
11 parties"). See also Civ L R 3-9(a) ("A person representing him or  
12 herself without an attorney is bound by the Federal Rules, as well  
13 as by all applicable local rules. Sanctions (including default or  
14 dismissal) may be imposed for failure to comply with local  
15 rules."). Plaintiff states, "I am not an attorney. I should not  
16 be held to the same standard as an attorney \* \* \*." Pl Resp (Doc  
17 #24) at 5:10. But the rules say otherwise: Plaintiff is, and will  
18 continue to be, held to the same standard as an attorney.

19 In fact, plaintiff's failure to oppose in a timely  
20 fashion cannot even be explained by ignorance of the rules, for the  
21 court's scheduling order of January 19, 2005, explicitly stated  
22 that "[p]laintiff's opposition is due on or before March 31, 2005."  
23 Doc #19 at 1:26. In any event, to clear up, perhaps, some of  
24 plaintiff's confusion: The April 21, 2005, date was a hearing  
25 date. As provided in Civ L R 7-2(a), motions must be filed not  
26 less than 35 days before the hearing date. March 17, 2005, was 35  
27 days before April 21, 2005. Under Civ L R 7-3(a), an opposition to  
28 a motion is then due 21 days before the hearing date -- in this

## United States District Court

For the Northern District of California

1 case, March 31, 2005. Even passing familiarity with the local  
2 rules would have apprised plaintiff of this system. The court  
3 admonishes plaintiff to obtain copies of the Federal Rules of Civil  
4 Procedure and the Civil Local Rules for the Northern District of  
5 California. The court will not excuse any further noncompliance  
6 with applicable rules of procedure.

7 Plaintiff also contends that he has been unable to enter  
8 the courthouse building because he "decline[s] to obtain either a  
9 driver's license or identification card from any state agency." Pl  
10 Resp (Doc #24) at 2:3. The court recognizes the  
11 "fundamental [constitutional] right of access to the courts."  
12 Tennessee v Lane, 124 S Ct 1978, 1994 (2004). It would be  
13 troubling indeed to prevent plaintiff from attending hearings in  
14 this matter simply because he lacks a government-issued  
15 identification card. But this is irrelevant to the question  
16 whether plaintiff is able to serve and file timely opposition  
17 papers, something that can be accomplished by using the mails.  
18 See, e.g., FRCP 5(b)(2)(B) (permitting service of papers by mail);  
19 Civ L R 5-1(a) (describing procedure for filing original document  
20 with the clerk of court). Moreover, the court is unaware of any  
21 hearing or other proceeding in this case that plaintiff has been  
22 unable to attend. (Plaintiff represents that he desires to attend  
23 e-filing training, Doc #24 at 2:9-10, and oral arguments in other  
24 cases, id at 2:6-8, but neither of these concern matters over which  
25 the undersigned has jurisdiction by virtue of this case, which is  
not designated for e-filing and in which there has been no oral  
argument.) Should plaintiff need to attend an in-court hearing in  
27 this matter in the future, he may apply to the court for an order  
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## United States District Court

For the Northern District of California

1 directing the Marshal to allow him to enter the building.

2 Plaintiff also discusses his inability to obtain certain  
3 records he believes will be relevant to this case. Although  
4 plaintiff's filing does not satisfy the procedural requirements of  
5 FRCP 56(f), he does appear to advance a Rule 56(f)-like argument  
6 that he should be permitted additional time to gather evidence to  
7 oppose defendant's motion for summary judgment. The court will  
8 consider this argument in deciding whether to entertain or continue  
9 defendant's summary judgment motion. For present purposes,  
10 however, the issue is beside the point; plaintiff could have timely  
11 come forward with a Rule 56(f) affidavit. His lack of evidence  
12 does not excuse his failure to file a timely opposition.

13 Plaintiff also asks the court to "allow [him] sufficient  
14 time to acquire assistance in the prosecution of this matter." Pl  
15 Resp (Doc #24) at 6:28. This may refer to plaintiff's Rule 56(f)-  
16 like argument described in the preceding paragraph. Or it may  
17 refer to plaintiff's interest in obtaining representation. This,  
18 again, does nothing to explain why plaintiff was unable to file a  
19 timely opposition. Moreover, the court declines plaintiff's  
20 invitation to put this case on hold. Plaintiff has filed a  
21 lawsuit; he must now prosecute it.

22 Finally, plaintiff offers argument on the merits of  
23 defendant's motion for summary judgment. Having found no ground on  
24 which to discharge the order to show cause, the court could in its  
25 discretion decline to consider this material. Nonetheless, in  
26 light of the strong policy favoring resolution of disputes on the  
27 merits, the court will consider plaintiff's submission in ruling on  
28 defendant's motion for summary judgment. Plaintiff will not,

1 however, be permitted to file further papers in opposition to  
2 defendant's motion.

3 \* \* \*

4 Accordingly, the order to show cause (Doc #22) is  
5 DISCHARGED to the extent that the court will consider plaintiff's  
6 response (Doc #24) in ruling on defendant's motion for summary  
7 judgment (Doc #20). Defendant may file a reply by April 29, 2005,  
8 upon which the matter will be deemed submitted and the court will  
9 issue a written decision without a hearing.

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11 IT IS SO ORDERED.  
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13 \_\_\_\_\_ /s/  
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15 VAUGHN R WALKER  
16 United States District Chief Judge  
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